

## PSLU Committee

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**From:** John and Christel Blumer-Buell <blubu@hawaii.rr.com>  
**Sent:** Monday, January 06, 2020 2:53 PM  
**To:** PSLU Committee  
**Subject:** ADDITIONAL PUBLIC TESTIMONY RE (PSLU-32). "COMMUNITY PLAN AMENDMENT, DISTRICT BOUNDARY AMENDMENT, AND CHANGE IN ZONING FOR THE NAHIKU COMMUNITY CENTER (HANA)". PLEASE CONFIRM RECEIPT.  
**Attachments:** Nahiku Com. Cntr. Exemption.pdf; Nahiku Com. Cntr. 10-1-12.pdf

Aloha,

Additional Public Testimony enclosed as Exhibits 1 and 2.  
For PSLU Committee meeting of 1-8-2020

Exhibit 1

**September 24, 2012, "DECLARATION OF EXEMPTION for NAHIKU COMMUNITY CENTER, TMK: (2) 1-2-02:023".**

Exhibit 2

**October 1, 2012, "NAHIKU COMMUNITY CENTER, TMK: (2) 1-2-02:023, Additional Objections and Issues".**

JOHN BLUMER-BUELL

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September 24, 2012

Director Glenn T. Correa, County of Maui Department of Parks and Recreation  
700 Halia Nakoia Street, War Memorial Complex  
Wailuku, Hawaii 96793 Sent via Email

Subject: **DECLARATION OF EXEMPTION for NAHIKU COMMUNITY CENTER, TMK: (2) 1-2-02:023**

Aloha Director Correa,

I am writing to; 1) Object to the "Declaration of Exemption" by the Maui County Department of Parks and Recreation for the proposed Nahiku Community Center. 2) Request the Maui County Department of Parks and Recreation and Administration for reconsideration of the "Declaration of Exemption". 3) Request an Environmental Assessment (EA) for the proposed project. 4) Request a Special Management Area Permit (SMA) for the proposed project.

**1&2) Objections to the "Declaration of Exemption" for the proposed Nahiku Community Center and Request the Maui County Department of Parks and Recreation and Administration for reconsideration of the "Declaration of Exemption".**

The "Declaration of Exemption", signed by you as director, states, "Exemption Class: 2. Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity and density, height and dimensions as the structure replaced. This exemption class includes agency actions intended to meet the agency's goals and objectives by replacement in whole or in part, the following, provided there is little or no increase in capacity".

a) **The proposed Nahiku Community Center does not have “substantially the same purpose and capacity” as the previous structure serving the Nahiku School. Clearly, there is a large increase in capacity and many potential negative impacts to the Nahiku Community.**

The proposed project does not meet the requirements for an exemption to Chapter 343 HRS and Chapter 11-200 HAR. On June 22, 2007, the State of Hawaii Land Board discussed the community center purposes and stated, “The Applicant shall be responsible for compliance with Chapter 343, HRS, as amended”. This issue is discussed more fully following 3) a). The pdf “Nahiku-State Land Board” is attached.

The Nahiku School building served a dozen or less Nahiku resident students. The proposed Nahiku Community Center proposes to serve one hundred and fifty persons, more than **ten (10) times the capacity** of the Nahiku School for a **completely different purpose**. The proposed Nahiku Community Center would be available for reservation and use by residents and visitors of Maui County. That user base is over one hundred and fifty thousand people, not even remotely “substantially the same purpose, capacity and density...” as a dozen or less Nahiku resident students and their teacher.

b) The old Nahiku School building also served as a teacher’s residence. Old drawings show around fifty percent (50%) of the building capacity was used for that purpose. A community center is **not** “substantially the same purpose” as a small school and a teacher’s residence.

c) The building has not in been in use as a school or school related residence since around 1958. The school was subsequently leased from the state as a private residence. The proposed community center is **not** a comparable or “substantially the same purpose” as a private residence.

d) The proposed community center proposes a commercial kitchen. This use is **not** “substantially the same purpose” and raises numerous important questions that would be answered routinely in an Environmental Assessment.

e) The State of Hawaii owned Nahiku School building was destroyed by fire on December 13, 2005. No replacement or reconstruction occurred in a timely manner or reasonable time frame. Now, only memories of the Nahiku School exist. **The proposed County of Maui owned community center is an altogether new concept and project.** The “Declaration of Exemption” is not applicable for the new project. An Environmental Assessment should be completed.

**3) Request an Environmental Assessment (EA) for the proposed project.**

a) The State of Hawaii Department of Land and Natural Resources Land Division met on June 22, 2007, to discuss “Set Aside to County of Maui for Community Center Purposes, Nahiku Homesteads, Nahiku, Koolau, Tax Map Key: (2) 1-2-002:023. On page 2, under “CHAPTER 343-ENVIRONMENTAL ASSESSMENT:” the document states:

“This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. In as much as the Chapter 343 environmental requirements apply to Applicant’s use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended”.

As quoted from the record, “the Applicant (County of Maui) **shall be responsible for compliance with Chapter 343, HRS, as amended.** Instead of fulfilling its obligation (“shall”) to be in full compliance with Chapter 343, HRS, the County of Maui has made a “Declaration of Exemption” from Chapter 343, HRS. The “Declaration of Exemption” avoids honest compliance with the State of Hawaii requirement. If the county refuses to reconsider the exemption, I will

request this issue be referred to the State Land Board for a public hearing on the issues of environmental requirements and compliance.

b) The residents of Nahiku, the residents of Maui County and the taxpayers of the state and county are entitled to full disclosure of possible environmental impacts in an Environmental Assessment. An Environmental Assessment allows residents and government agencies to examine the Draft EA, ask questions, make comments, receive written answers and suggest alternatives to the proposal. There is a long list of considerations in Chapter 343 HRS. I will not recite them in this letter. There are a number of special environmental considerations that need to be fully considered for the proposed Nahiku Community Center. **There is no question the proposed and possible scope and use of the proposed project could change the character of the Nahiku Community in a profound way.** The entire scope of the proposed project needs to be objectively examined in an Environmental Impact Statement, not arbitrarily exempted.

c) The signed statement that, "I have considered the potential effects of the above listed project as provided by Chapter 343, HRS and Chapter 11-200 HAR. I declare the project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment" is not credible. The use of the word "probably" is an uninformed disclaimer of responsibility and is against the legal intent of Chapter 343 HRS.

For your information, I received several phone calls from residents of Nahiku who asked for my assistance in researching the issues. They knew I attended several meetings over the past few years in Nahiku regarding water and land use issues. The proposed project was under consideration at that time. My testimony to the Maui County Council dated February 12, 2012, is attached as a pdf, clearly states my opinion at that time. I always thought there would be an Environmental Assessment as part of due process, transparency and funding of a public project on public land. I was surprised to learn that a \$750,000 (seven hundred and fifty thousand dollar) project on public land in the Special Management Area (SMA) was declared exempt.

As part of my research, I contacted the State Office of Environmental Quality Control to find out if they had published a notice regarding the project. The OEQC had no information regarding the project. I also visited the Hana Library to find out if there was a copy of a Draft EA. The library had not received a Draft EA.

On August 24, 2012, I asked Council Member Robert Carroll in an email, "Has a Draft Environmental Assessment or a Draft Environmental Impact Statement been produced for the proposed Nahiku Community Center?" On the same day I received a response from Morris Haole Jr., Executive Assistant to Council Member Carroll stating, "Morning John, because the new center is going to replace a former structure (same site) the project is exempt".

On September 12, 2012, I requested and received the EA Exemption Memo from the County of Maui Office of Mayor, Budget Director.

I was told this morning by the State Office of Environmental Quality Control that since there was no "Public Notice" of the "Exemption" that I needed to make a written appeal within 120 days of the "time of discovery". This letter is timely and within that time frame.

The "exemption" and lack of an Environmental Assessment have created an unfortunate and unnecessary controversy. The solution is simply to produce an Environmental Assessment. The EA will provide accurate information and allow the community to be heard. The Hana Community Plan, which includes Nahiku, encourages community dialogue as a way to avoid conflict. An Environmental Assessment would encourage dialogue that could lead to an actual community consensus.

I have been told by a number of Nahiku residents they are in support of an Environmental Assessment and will, apparently, come forward to support an EA. I suggested they should become more public with their concerns. I am not going to wait for them to submit their opinions or requests. My requests for due process stand on their own merit.

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I recently received a phone call and invitation from the president of the Nahiku Community Association to attend their next meeting later this month. We discussed some of the issues regarding the proposed project. I suggested an Environmental Assessment would be a very clear and constructive way to address issues that deeply concern members of the community.

Please respond to this letter in a timely manner. This is an urgent matter. Please acknowledge receipt of this email.

Thank you for your careful consideration.

Sincerely yours,

*John Blumer-Buell*

JOHN BLUMER-BUELL

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October 1, 2012

Mayor Arakawa

200 South High Street, Wailuku, Hawaii 96793

Director Glenn T. Correa, County of Maui Department of Parks and Recreation

700 Halia Nako Street, War Memorial Complex

Wailuku, Hawaii 96793 Sent via Email and Certified U.S. Mail

**Subject: NAHIKU COMMUNITY CENTER, TMK: (2) 1-2-02:023,  
Additional Objections and Issues.**

Aloha Mayor Arakawa and Director Correa,

On September 23, 2012, I wrote you regarding the "Declaration of Exemption for Nahiku Community Center, TMK: (2) 1-2-02:23. I requested a confirmation of receipt of my email from you. I received no confirmation. Therefore, I mailed you the objection and requests via Certified U.S. mail.

**This letter raises additional objections and issues that need to be settled before moving the proposed project forward.**

**1) Ownership of Tax Map Key: (2)-1-2-02:23.** The legal ownership of the land for the proposed Nahiku Community Center has been questioned by the President of the Nahiku Community Association, Kamalu Kaho'okele. The March 12, 2012, Maui News, states, "Currently, the state owns the property, although Kaho'okele said it was formerly owned by her family and the land was supposed to be returned to her family after the school closed. She said that she has documents to prove ownership". The Maui News article is attached as a pdf.

I request legal ownership of the property be established now, before spending any additional taxpayers' money on the project. The proposed project is represented as being on private property by the President of the Nahiku



Community Association. This issue should have been resolved before any funding was approved by the State of Hawaii, the Maui County Council and the Mayor of Maui County. I request the ownership documents be put into the public record and become available for public review. The County of Maui, the State of Hawaii and Kamalu Kaho'okele need to legally clarify the issue from their points of view with documentation.

**2) Maui County Code and Non-Conforming Use Issues:** Maui Planning Director Will Spence recently spoke to the Hana Community regarding "growth boundaries". During the presentation, he stated that non conforming structures could **not** be replaced if they were destroyed by fire. That is exactly the case with the proposed Nahiku Community Center. The property was zoned agriculture with a non conforming use structure when the Old Nahiku School burnt down on December 13, 2005. Therefore, the structure cannot be replaced simply by making a "Declaration of Exemption" from state or county laws. The proposed Nahiku Community Center is not a permitted use on agriculturally zoned land.

**3) Zoning Issues.** The proposed Nahiku Community Center is not a permitted use on the agriculturally zoned lot. The zoning of the lot needs to be changed through a community plan amendment and zoning. A Public/Quasi Public Zoning or Park Zoning would probably be the appropriate zoning. However, it has not been established the residents of the Nahiku Community want the proposed community center. The community may want to leave the parcel in agriculture or zone it for park use.

The Nahiku Community Association has not established it speaks for the residents of the community regarding the proposed community center. In fact, there is opposition to the proposal.

In my letter dated September 24, I suggested, "The solution is simply to produce an Environmental Assessment. The EA will provide accurate information and allow the community to be heard. The Hana Community Plan, which includes

Nahiku, encourages community dialogue as a way to avoid conflict. An Environmental Assessment would encourage dialogue that could lead to an actual community consensus”.

A community plan amendment and request for zoning would trigger the requirement for an Environmental Assessment or Environmental Impact Statement as required by Chapter 343 HRS and as required by the Hawaii State Department of Land and Natural Resources Land Division pursuant to the action taken on June 22, 2007. The document of that meeting was submitted with my testimony dated September 24, 2012.

**4) “Segmentation” Issues.** My current understanding is the proposed community kitchen may have been deleted in the short term for a lack of available funds. However, that and all other issues need to be fully vetted now, not later, in an Environmental Assessment or Environmental Impact Statement.

**5) Grading Permit and/or Building Permit.** I request a grading permit and/or a building permit be denied until the entire scope of the proposed project is examined in an Environmental Assessment or Environmental Impact Statement.

Please confirm receipt of this email. Please respond to each and every issue raised in this letter and my September 24, 2012, letter. The community is entitled to due process.

Thank you for your careful consideration.

Sincerely yours,

*John Blumer-Buell*